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Workmen's Compensation - Validity of Compromise

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In the principal case the defendant had never forfeited the land to the state, and consequently had no right to redeem it. Therefore, the act had no application and could not be pleaded.

E.L.L.

WORKMEN'S COMPENSATION—VALIDITY OF COMPROMISE—Plaintiff, with approval of the district judge, compromised his claim under the Workmen's Compensation Act[1] before the duration of his disability was definitely ascertainable. It later appeared that he was totally disabled and he now seeks to set aside the compromise agreement. *Held,* the compromise was not binding and full compensation under the Workmen's Compensation Act was allowed.[2] *Puchner v. Employers' Liability Assurance Corporation,* La. Sup. Ct. Docket No. 36,146 (1941).

No provision of the Louisiana Workmen's Compensation Act mentions compromise by name, but Section 17[3] gives interested parties "the right to settle all matters of compensation between themselves" provided such settlement is (1) "reduced to writing," (2) "substantially in accord with the various provisions of this act," and (3) "approved by the court."

The courts of appeal have consistently held valid a compromise entered into by an injured workman and his employer and approved by the proper court[4] where there was a bona fide dispute as to the liability of the employer,[5] the extent of the injury,[6] the

1. La. Act 20 of 1914 [Dart's Stats. (1932) §§ 4391-4434].

2. The penalty of fifty per cent under the act originally imposed on the defendant was eliminated on rehearing because the defendant had acted in reliance upon the prior jurisprudence of the courts of appeal holding such compromises valid.

3. La. Act 20 of 1914, § 17, as last amended by La. Act 38 of 1918, § 1 [Dart's Stats. (1932) § 4407].

4. Bradford v. New Amsterdam Casualty Co., 190 So. 210 (La. App. 1939). See Calhoun v. Louisiana Delta Hardwood Lumber Co., 182 So. 362 (La. App. 1938).

5. Horney v. Scott, 171 So. 172 (La. App. 1936); Calhoun v. Louisiana Delta Hardwood Lumber Co., 182 So. 362 (La. App. 1938); Cognolatti v. Legion Pants Co., 186 So. 377 (La. App. 1939); Weaver v. Mutual Building & Homestead Association, 195 So. 384 (La. App. 1940); White v. Osterland & Knight Timber Co., 200 So. 674 (La. App. 1941). See Faircloth v. Stearns-Roger Mfg. Co., 147 So. 368, 370 (La. App. 1933); Young v. Marx & Son, 189 So. 167, 168 (La. App. 1939); Self v. Wyatt Lumber Co., 189 So. 327, 329 (La. App. 1939); Bradford v. New Amsterdam Casualty Co., 190 So. 210, 211 (La. App. 1939); Walding v. Caldwell Brothers & Hart, 193 So. 501, 502-503 (La. App. 1940); McDaniel v. Great Southern Lumber Co., Inc., 197 So. 812, 815 (La. App. 1940). In all cases, to sustain a compromise there must be a bona fide dispute. Fluitt v. New Orleans, T. & M. Ry., 187 La. 87, 174 So. 163 (1937). See Eaglin v. Southern Kraft Corp., 200 So. 63 (La. App. 1941).

6. Crawford v. Crawford Lumber Co., 1 La. App. 636 (1925); Grace v.

duration of the disability,[7] or the amount of compensation.[8] However, where fraud, ill practice, or misrepresentation was employed in inducing the employee to accept the settlement, the courts have held the compromise invalid.[9] This jurisprudence has been based chiefly on two supreme court cases—*Musick v. Central Carbon Company*[10] and *Young v. Glynn.*[11]

Eistenhuth, 150 So. 398 (La. App. 1933); Horney v. Scott, 171 So. 172 (La. App. 1936); Self v. Wyatt Lumber Co., 189 So. 327 (La. App. 1939); Young v. Marx & Son, 189 So. 167 (La. App. 1939); Bradford v. New Amsterdam Casualty Co., 190 So. 210 (La. App. 1939); Walding v. Caldwell Brothers & Hart, 193 So. 501 (La. App. 1940); White v. Osterland & Knight Timber Co., 200 So. 674 (La. App. 1941). See Moss v. Levin, 120 So. 258, 259, 260 (La. App. 1929); Faircloth v. Stearns-Roger Mfg. Co., 147 So. 368, 370 (La. App. 1933); Reid v. Florio & Co., Inc., 172 So. 572, 574 (La. App. 1937); Cognolatti v. Legion Pants Co., 186 So. 377, 379 (La. App. 1939); Weaver v. Mutual Building and Homestead Ass'n, 195 So. 384, 388 (La. App. 1940); McDaniel v. Great Southern Lumber Co., Inc., 197 So. 812, 815 (La. App. 1940).

7. Crawford v. Crawford Lumber Co., 1 La. App. 636 (1925); Cognolatti v. Legion Pants Co., 186 So. 377 (La. App. 1939); Young v. Marx & Son, 189 So. 167 (La. App. 1939); Bradford v. New Amsterdam Casualty Co., 190 So. 210 (La. App. 1939); Walding v. Caldwell Brothers & Hart, 193 So. 501 (La. App. 1940); Forrestal v. McCray Refrigerator Sales Corp., 196 So. 516 (La. App. 1940). See Faircloth v. Stearns-Roger Mfg. Co., 147 So. 368, 370 (La. App. 1933); Self v. Wyatt Lumber Co., 189 So. 327, 329 (La. App. 1939); Weaver v. Mutual Building and Homestead Ass'n, 195 So. 384, 388 (La. App. (1940); McDaniel v. Great Southern Lumber Co., 197 So. 812, 815 (La. App. 1940); White v. Osterland & Knight Timber Co., 200 So. 674, 676 (La. App. 1941).

8. Forrestal v. McCray Refrigerator Sales Corp., 196 So. 516 (La. App. 1940); McDaniel v. Great Southern Lumber Co., 197 So. 812 (La. App. 1940). See Moss v. Levin, 120 So. 258, 259 (La. App. 1929); Faircloth v. Stearns-Roger Mfg. Co., 147 So. 368, 370 (La. App. 1933); Cognolatti v. Legion Pants Co., 186 So. 377, 379 (La. App. 1939); Young v. Marx & Son, 189 So. 167, 168 (La. App. 1939); Self v. Wyatt Lumber Co., Inc., 189 So. 327, 329 (La. App. 1939); Bradford v. New Amsterdam Casualty Co., 190 So. 210, 211 (La. App. 1939); Walding v. Caldwell Brothers & Hart, 193 So. 501, 502-503 (La. App. 1940); Weaver v. Mutual Building and Homestead Ass'n, 195 So. 384, 388 (La. App. 1940); White v. Osterland & Knight Timber Co., 200 So. 674, 676 (La. App. 1941); McCastle v. Architectural Stone Co., 4 So. (2d) 120, 122 (La. App. 1941).

9. McHenry v. Wall, 157 So. 632 (La. App. 1934); Miller v. United States Fidelity & Guaranty Co., 169 So. 258 (La. App. 1936) (petition alleging fraud states a cause of action); Calhoun v. Louisiana Delta Hardwood Lumber Co., Inc., 182 So. 362 (La. App. 1938). See McCastle v. Architectural Stone Co., 4 So. (2d) 120 (La. App. 1941), setting aside a compromise entered into by "an ignorant negro" unrepresented by counsel on the ground that the employee suffered from an error which "partook both of the nature of error of law and an error of fact."

10. Musick v. Central Carbon Co., Inc., 166 La. 355, 117 So. 277 (1928). The supreme court distinguished this case from the principal case on the ground that it involved a bona fide dispute over the employer's liability under the act, whereas, in the case under consideration the dispute was merely over the duration of disability, liability under the act not being questioned.

11. Young v. Glynn, 171 La. 371, 131 So. 51 (1930). This case was distinguished in the *Puchner* decision on the ground that the sole issue for review was fraud, and the court, finding no fraud, reinstated the lower court's decision. But see the report of the case, 171 La. at 373, 131 So. at 52. "In Musick v. Central Carbon Co. . . . this court held that the prohibition of subsection 8 . . . did not apply where there existed grounds for difference as to what might be due. And in this case there certainly existed grounds for dif-

In the principal case the Louisiana Supreme Court apparently established the new rule that compromises are invalid under the act. The court was of the opinion that the provision in Section 17 requiring the agreement to be "substantially in accord with the various provisions of the act" connected it with all other pertinent provisions, and undoubtedly the lawmakers intended that a settlement under Section 17 in the nature of a lump sum settlement was to be substantially in accord with the provision dealing with lump sum settlements.[12]

The purpose of the Workmen's Compensation Act is to transfer the loss due to certain industrial accidents from workmen as a class and to provide, as a part of the cost of production, quick, certain, and reasonably adequate compensation for industrial accidents, independent of the fault of the employee.[13] A weekly compensation based upon the wages received and the extent of the injury suffered is specifically provided by the act.[14] Finding the act silent on the right of compromise, the Louisiana Supreme Court concluded that the legislature thought it best not to allow compromises. The decision is founded also in the idea that public policy disapproves of any attempt to drive a bargain with the employee which would result in his receiving a lower compensation than is contemplated by the act.

In other states having acts similar to the Louisiana act, with no express provision on the right to compromise, the courts are divided as to the validity of an attempted compromise approved by the commission or board.[15] The great majority of jurisdictions,

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ference of opinion as to how much longer plaintiff would require for convalescence."

12. La. Act 20 of 1914, § 8(9), as last amended by La. Act 242 of 1928, § 1 [Dart's Stats. (1932) §§ 4407]. A lump sum settlement can be effected only when both parties agree on all issues, but there must be a bona fide dispute before a compromise can be made.

Mr. Justice O'Neill took the position that there is no connection between Section 17 and Section 8(9). He said that an amicable settlement need not be made in a lump sum and if the settlement fixes a weekly compensation, then Section 8(9) would not apply.

13. Harper, A Treatise on the Law of Torts (1933) 513, § 207; Prosser, The Law of Torts (1941) 519, § 69. See also Bradbury, Workmen's Compensation Law (3 ed. 1917) 1-7; Mayer, Workmen's Compensation in Louisiana (1937) 1-7; 1 Schneider, Workmen's Compensation (3 ed. 1941) 1-26.

14. La. Act 20 of 1914, § 8, as last amended by La. Act 242 of 1928, § 1 [Dart's Stats. (1939) § 4398].

15. Foster's Case, 123 Me. 27, 121 Atl. 89 (1923) (compromise valid); Walker v. State Compensation Commissioner, 107 W.Va. 531, 149 S.E. 604 (1929) (compromise invalid as against public policy). See State ex rel. Weinberger v. Industrial Commission, 35 N.E. (2d) 861, 863 (Ohio 1941) (split of authority in Ohio).

however, have an express provision permitting compromises under the act.[16]

It can be argued that the decision in the instant case should be limited to the case where there is a dispute over the *duration of disability*. This position is supported by the statement in the original opinion that compromises *will be valid* where the letter and spirit of the law justifies them. An example cited is when the *employer's liability under the act* is disputed.

However, the implications of the decision indicate that the court may be prepared to throw out *all* compromises. Certain dictum supports this view.[17] The court's position is that a compromise will not be allowed because the duration of disability is not a proper object of speculation and, further, because compromises are not expressly provided for in the act. This reasoning might be applied to *all* compromises, regardless of the nature of the dispute between the parties.

In view of the strong possibility that the Louisiana courts will hereafter refuse to sanction any workmen's compensation compromise which does not meet the statutory requirements of lump sum settlements, the advisability of attempting to compromise any claim is highly questionable until further adjudications by the courts or legislative amendments to the Compensation Act clarify the legal status of the compromise.

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16. Thirty-one states and England, in their workmen's compensation acts, expressly allow compromises to be made with approval of the commission or board. (4 Schneider, op. cit. supra note 13, at 4441, cites thirty states which expressly allow compromises. Examination of the statutes reveals the fact that Montana should be added to the list. See Mont. Rev. Codes Ann. (Anderson and McFarland, 1935) § 2926. See also Pa. Stat. Ann. (Purdon, 1930) tit. 77, § 731. The Longshoremen's and Harbor Worker's Compensation Act, 52 Stat. 1164 (1938), 33 U.S.C.A. § 908(i) (1940) permits compromises in very narrow, designated cases when approved by the commissioner.

Tennessee and Louisiana are the only two states having the Workmen's Compensation Act administered solely by the court. 4 Schneider, op. cit. supra note 13. (Notice that Section 8 in this citation is limited by Section 7 and Section 9).

17. In the original opinion is found, "Section 17 was intended to fix the procedure which was to be followed in making settlements under the act when there was no dispute or disagreement between the parties and was intended to complement sub-section 8 of Section 8 (now sub-section 9), which merely made provision for lump sum settlements without prescribing the procedure."

In the opinion on rehearing, "The statute provides that compensation *shall* be paid for the injuries producing total permanent disability. . . . This provision is mandatory."

These dicta appear to indicate an attack on *all* compromises.